February 7, 2013

VIA ELECTRONIC SUBMISSION

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: *In the Matter of Petition to Launch a Proceeding Concerning the TDM-to IP Transition*; *In the Matter of Petition of the National Telecommunications Cooperative Association for a Rulemaking to Promote and Sustain the Ongoing TDM-to-IP Evolution,* GN Docket No. 12-353

Dear Ms. Dortch,

On February 4, 2013, Barbara Cherry (Professor, Department of Telecommunications, Indiana University) met with Jonathan Chambers and Paul Lafontaine of the Office of Strategic Planning and Policy Analysis, and with Steve Wildman, Chief Economist, regarding the above-referenced proceedings.

Professor Cherry discussed that the Commission's consideration of AT&T's petition for a regulatory experiment requires integration of both legal and scientific modes of inquiry. A scientific approach requires that the objectives of the experiment be clearly identified, appropriate methodology and operationalization be chosen, and the base case or baseline from which experimentation is to be done be defined.

Definition of the baseline, in turn, requires an accurate understanding of the relevant bodies of law from which deregulatory policies are evolving. In this regard, Professor Cherry discussed her academic research that shows how the common law obligations of common carriers are based in tort law and independent of market structure. The legal obligations of common carriers have tended to be misunderstood and conflated with those of public utilities, tending to mislead consideration and evaluation of deregulatory policies in the U.S. This conflation is evident in AT&T's petition in its characterization of regulatory obligations as having arisen from a monopoly era. Failure to correct this misunderstanding of common carriage obligations can lead to flawed design of further regulatory experimentation requested in AT&T's petition.

Professor Cherry encouraged the Commission to examine the natural regulatory experiments already occurring in the U.S. These include the variance of state laws regarding the permissibility of municipally-owned broadband networks, elimination of carrier of last resort obligations, and remaining state commission jurisdiction over IP services. Without an accurate understanding of the lineage of prior and ongoing regulatory experiments in the U.S., design and interpretation of results from a new regulatory experiment will likely be severely flawed.

Professor Cherry also encouraged the Commission to learn from international experimentation. In this regard, a comparison of experience under U.S. and Canadian law – both of which share the same common law history – would be particularly valuable, as broadband access services are still considered common carriage services under Canadian law.

Professor Cherry also encouraged the Commission to consider potential adverse, unintended consequences of experimentation requested in AT&T's petition. Moreover, regulatory experimentation in trial wire centers could have irreversible results. For example, elimination of section 214 approval can lead to de facto exit from the market, leaving customers without service. More specifically, the wireline incumbent may not initially exit the market – on a de jure basis – upon replacing its TDM with IP services. However, when providing only IP services and thereby no longer bearing the obligations of either common carriage or public utility, the incumbent can then discontinue service at will to any given customer. This is because the incumbent will not even have the obligation to serve upon reasonable request (i.e. common carriage). Over time, accumulation of such discontinuances on a customer basis may constitute *de facto exit* from a market.

Sincerely,

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cc. Jonathan Chambers
Paul Lafontaine
Steve Wildman